

Rio+20: who owns the Green Economy?

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Disclosure statement

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Rio+20 has backtracked on many intellectual property measures put in place by Agenda 21. David Foote/AAP

The Rio+20 summit has raised a number of difficult questions about law and technology: what is the relationship between intellectual property and the environment? What role does intellectual property play in sustainable development? Who will own and control the Green Economy? What is the best way to encourage the transfer of environmentally sound technologies? Should intellectual property provide incentives for fossil fuels? What are the respective roles of the public sector and the private sector in green innovation? How should biodiversity, traditional knowledge and Indigenous intellectual property be protected?

The Earth Summit held in Rio de Janeiro in 1992 resulted in a number of landmark agreements. The 1992 texts include the [Rio Declaration on Environment and Development](#), [Agenda 21](#), the [United Nations Framework Convention on Climate Change](#), the [Convention on Biological Diversity](#), and the [Forest Principles](#). These agreements considered the relationship between intellectual property, sustainable development, and the environment.

The [Rio+20 conference](#) has focused on two central themes: “a green economy in the context of sustainable development and poverty eradication” and the “institutional framework for sustainable development”. Chinese diplomat [Sha Zukang](#), secretary-general for Rio+20, observed: “A critical issue is Intellectual Property Rights, for which I have always stressed the key is affordability. If technologies are not affordable, then all this pledge to international cooperation is just empty talk.”

There was much debate over intellectual property, development, and the Green Economy at the summit.

Intellectual property, technology transfer, and the Green Economy

1992's [Agenda 21](#) said “consideration must be given to the role of patent protection and intellectual property rights along with an examination of their impact on the access to and transfer of environmentally sound technology, in particular to developing countries”. Agenda 21 promoted technology transfer, and envisaged “a collaborative network of ... international research centres on environmentally sound technology.”

Twenty years later, at Rio+20, there has been further debate over intellectual property, technology transfer and the environment.



Agenda 21 promoted the need for transfer of technology to increase sustainability, but Rio+20 has backed off. [source](#)

One observer, [IP Watch](#), noted: “... the developed and the developing world are divided on the mechanisms needed to make [innovation and green technology] happen on the ground ... Intellectual property rights are a vital piece of this fractious debate.”

The [World Intellectual Property Organization's](#) Rio+20 submission said: “The Intellectual Property system, and in particular patents, are fundamental in that they provide a stimulus for investment in innovation and contribute to a rapid - and global - diffusion of new technologies.”

[China and the G77](#) called for “an International Mechanism” to facilitate “transfer of technology in sustainable development.” The International Centre for Trade and Sustainable Development (ICTSD) proposed a [Global Green Innovation and Technology Partnership](#).

The early June draft of the Rio+20 text noted “that consideration must be given to the role of patent protection and intellectual property rights along with an examination of their impact on the access to and transfer of environmentally sound technology, in particular to developing countries”.

The United States, the European Union, Japan, Canada, Australia and Switzerland wanted to [delete this paragraph](#). Such nations favoured strong protection of

intellectual property rights in order to encourage private investment in the research and development of environmental technologies. [Martin Khor of the Third World Network](#) noted that developed countries were hostile to obligations on technology transfer: “Wherever the words ‘technology transfer’ appear, there is an attempt to change it to voluntary transfer on mutually agreed terms and conditions”. The United States, Canada, and Japan also opposed the establishment of a Technology Mechanism at Rio+20.

Intellectual property is a cipher in Rio+20 - a topic of “importance”, but not worthy of further textual elaboration. The final Rio+20 text - entitled the [Future We Want](#) - merely affirms “the importance of technology transfer to developing countries” and recalls “the provisions on technology transfer, finance, access to information, and intellectual property rights as agreed in the Johannesburg Plan of Implementation”. The minimalist text on intellectual property in Rio+20 is terse compared to Agenda 21’s much more [extensive provisions](#).

Rio+20 creates no new Technology Mechanism, like the [UNFCCC Climate Technology Centre](#). It merely asks for countries to “strengthen international cooperation”. It invites governments “to create enabling frameworks that foster environmentally sound technology.” It also recognises that “the private sector can contribute to the achievement of sustainable development, including through the important tool of public-private partnerships”.

There was a significant push to [end subsidies for fossil fuels at Rio+20](#). However, intellectual property law continues to play a double role - providing incentives alike for clean, renewable energy; as well as dirty, polluting technologies in coal, oil, and gas.

Intellectual property, public health and access to medicines

The [Future We Want](#) text does recognise “the importance of universal health coverage to enhancing health, social cohesion and sustainable human and economic development.” It emphasises that “HIV and AIDS, malaria, tuberculosis, influenza, polio and other communicable diseases remain serious global concerns”. It also acknowledges “the global burden and threat of non-communicable diseases”.



Accessible public health and sustainability are intertwined. Narendra Shrestha/EPA

There was much debate as to whether the text should refer to the debate over intellectual property, public health, and access to essential medicines. Even though [Hillary Clinton](#) emphasised the need to “chart a path towards an AIDS-free generation”, the United States delegation wanted to delete references to access to essential medicines.

However, at Brazil’s insistence, Paragraph 142 of the text of [Future We Want](#) maintains: “We reaffirm the right to use, to the full ... flexibilities [under international intellectual property] for the protection of public health, and, in particular, to promote access to medicines for all, and encourage the provision of assistance to developing countries in this regard.”

This is an important symbolic recognition of the connections between public health, sustainable development, and the environment.

More could have been done at Rio+20. [One suggestion](#) was Rio+20 should have established “patent pools” (along the lines of the [Medicines Patents Pool](#)) to “finance the transfer of clean technologies and their development in developing countries.”

A Global Indigenous Network: intellectual property, traditional knowledge and biodiversity

The [Future We Want](#) text says: “We stress the importance of the participation of indigenous peoples in the achievement of sustainable development.” Moreover, it recognises “that traditional knowledge, innovations and practices of indigenous peoples and local communities make an important contribution to the conservation and sustainable use of biodiversity.” However, there is a lack of firm commitment to protect traditional knowledge and Indigenous intellectual property.

The Australian Government made a notable contribution to the debate, establishing a [Global Indigenous Network](#). Built on the model of [Caring for Our Country](#), the Indigenous Peoples and Local Communities Land and Sea Managers Network will also involve New Zealand, Norway, and Brazil. The Prime Minister [Julia Gillard](#) observed that this forum “will help us listen and learn”.

This is an innovative policy contribution. It may help practically manage and protect traditional knowledge in a range of jurisdictions. The proposal could be strengthened further with legislative reforms to [protect Indigenous Intellectual Property](#) in participating countries. It could also be extended to other nations - particularly members of the Alliance of Small Island States.



Indigenous people have knowledge that can help us move towards more sustainable development, but how will their rights to that knowledge be protected? Marcelo Sayao/EPA

The [Convention on Biological Diversity 1992](#) also promotes informed consent and benefit-sharing in respect of genetic resources held by Indigenous Communities.

Our common vision?

The Rio+20 text [The Future We Want](#) speaks of “our common vision” for sustainable development and the Green Economy. However, the topic of intellectual property and the environment at Rio+20 was the subject of division, confrontation, and ultimately a lack of consensus.

The minimalist, weak text on intellectual property, technology transfer, and the Green Economy retreats from the Earth Summit’s texts two decades ago. Instead, there is hortatory language about encouragement, acknowledgement, and reaffirmation. There has been concern that such important issues have been [glossed over](#) at the summit. Perversely, the Future We Text subtracts from international law on intellectual property, the environment, and sustainable development. Little wonder some critics have dubbed the summit Rio-20.

Reflecting on the lack of real progress at Rio+20, Norwegian international leader and advocate of sustainable development [Gro Harlem Brundtland](#) observed that there were “complex reasons” why governments had failed to take the “common vision” further - including the power of corporations: “In our political system, corporations, businesses and people who have economic power influence political decision-makers - that’s a fact, and so it’s part of the analysis.”

Future international summits on the environment, biodiversity, and climate change have been left to reconcile such tensions over [intellectual property and the global commons](#).

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